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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KLAUS-PETER MAASS, UWE BERGMANN,
ARND G. HERWIG, STEFAN JUTZI, PATRICE CARDINE,
RAINER GRIMM, KLAUS-DIETER STRAUSS, DANIEL DREWNIOK,
HARALD KOLLNER, GEORG WURM, PATRICK HOF,
SIMON BLAIR DOBSON, KENNETH W. SCHANG, and
GREGORY KEYES

Appeal 2008-1037
Application 09/672,393
Technology Center 3600

Decided: June 26, 2008

Before JENNIFER D. BAHR, LINDA E. HORNER, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Klaus-Peter Maass et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 10, 11, 14-21, 23, and 25-29, which are all of the pending claims. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

This is the second appeal in the present application. In the first decision (hereinafter "Decision"), mailed September 23, 2004, in Appeal No. 2004-1636, a panel of this Board reversed the rejections of claims 10-13 and 23 under 35 U.S.C. § 102(a) as anticipated by Szerdahelyi and claims 14-22 and 24 under 35 U.S.C. § 103 as unpatentable over Szerdahelyi in view of Carlo. In the Decision, the panel also remanded the application to the Examiner for consideration of an alternative reading of claims 10-13 on Szerdahelyi, or Szerdahelyi in view of other prior art of which the Examiner may be aware,¹ in light of comments by the panel regarding the scope of the claims.

The Invention

Appellants' claimed invention is directed to a motor vehicle door. Claims 10 and 27, the only independent claims, read as follows:

10. A motor vehicle door comprising:
an interior sheet metal;

¹ In particular, the panel queried "whether the construction of the exterior sheeting and interior sheet metal, with the large access opening 22 formed at the free edge of the essentially pot-shaped or tub-shaped interior sheet metal, illustrated in appellants' Figure 1 is a conventional construction" (Decision 6). In rejecting the claims, the Examiner does not present any evidence that this is a conventional construction.

an exterior sheeting;

a hollow interior space formed between said exterior sheeting and said interior sheet metal;

an opening in said interior sheet metal;

a carrier module that closes said opening and carries at least one functional part of the motor vehicle door, said carrier module including a base plate which closes said opening from inside said hollow interior space; and

an access opening formed at a free edge of said interior sheet metal sized large enough to allow entry of said carrier module into said hollow interior space.

27. A motor vehicle door comprising:

an interior sheet metal;

an exterior sheeting;

a hollow interior space formed between said exterior sheeting and said interior sheet metal;

an access opening to said hollow interior space provided in said interior sheet metal;

a closing plate that closes said access opening, said closing plate including an opening; and

a carrier module that carries a window lifting arrangement and closes said opening, said carrier module including a base plate, wherein said access opening is sized large enough to allow entry of said carrier module into said hollow interior space.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

Szerdahelyi	US 6,076,882	Jun. 20, 2000
Carlo	US 6,233,875 B1	May 22, 2001

Appellants seek review of the Examiner's rejections of claims 10, 11, 23, and 25-28 under 35 U.S.C. § 102(a) as anticipated by Szerdahelyi and claims 14-21 and 29 under 35 U.S.C. § 103(a) as unpatentable over Szerdahelyi in view of Carlo.²

The Examiner provides reasoning in support of the rejections in the Answer, mailed December 28, 2006. Appellants present opposing arguments in the Appeal Brief, filed March 6, 2007, and Reply Brief, filed February 26, 2007.

THE ISSUES

The first issue before us in this appeal is whether Appellants demonstrate that the Examiner erred in determining that the subject matter of claim 10 is anticipated by Szerdahelyi. This issue turns in part on whether Szerdahelyi's opening 10 is "an access opening formed at a free edge of said interior sheet metal" as called for in Appellants' claim 10.

² The Examiner has apparently withdrawn the rejection of claims 10, 11, 14-21, 23, 25, and 26 under 35 U.S.C. § 112, second paragraph, set forth in the Final Rejection, mailed July 27, 2005. Normally, a rejection will be assumed to be withdrawn because of an examiner's failure to carry such rejection forward and to restate it in the answer. *Ex parte Emm*, 118 USPQ 180, 181 (Bd. App. 1957).

A second issue is whether Appellants demonstrate that the Examiner erred in determining that the subject matter of claim 27 is anticipated by Szerdahelyi. This issue turns on whether Szerdahelyi discloses a closing plate that closes opening 10, on which the Examiner reads the claimed "access opening," and further includes an opening that is closed by a carrier module that carries a window lifting arrangement, as required in claim 27.

OPINION

The Anticipation Rejection

Claims 10, 11, 23, 25, and 26

Appellants argue Szerdahelyi's cutout opening 10, on which the Examiner reads the "access opening," is not formed at a free edge of the interior door panel 1b. Instead, cutout opening 10 is formed in a central portion of the interior door panel 1b. Appeal Br. 4. We agree with Appellants.

The Examiner refuses to give any weight to "free edge," contending that the phraseology "free edge" is not supported in the Specification. *See* Ans. 4 and Final Rejection 4. The Examiner's contention is incorrect. Appellants' Specification clearly states, on page 6, that in the first embodiment, "the exterior sheeting 14 serves as the closing element for an adequately large access opening 22, formed at the free edge of the essentially pot-shaped or tub-shaped interior sheet metal" *See* Figure 1, item number 22. It appears that the access opening as claimed is created by forming the interior sheet metal 12 and the exterior sheeting 14 as separate pieces, and assembling them together after the insertion of the carrier module. Prior to such assembly, an access opening is formed at a free edge

(along the entire periphery) of the interior sheet metal. There is no indication as to whether Szerdahelyi's inner door panel 1b and outer door panel 1a are similarly formed, such that an access opening would be formed along the periphery of inner door panel 1b. Nor will we speculate as to whether it is so formed. Szerdahelyi's opening 10, on which the Examiner reads the "access opening" of claim 10, is formed in a central interior portion of the inner door panel 1b, not "at a free edge of" said panel, as required in claim 10. The Examiner erred in not giving weight to the limitation that the access opening is "formed at a free edge of said interior sheet metal." Consequently, the Examiner's rejection of claim 10, and claims 11, 23, 25, and 26 depending from claim 10, is grounded on the Examiner's flawed determination that Szerdahelyi's opening 10 is "formed at a free edge of said interior sheet metal" and thus cannot be sustained.

Claims 27 and 28

Appellants argue Szerdahelyi's window lift mechanism 31 is not carried by functional units 5, 6, but rather by module support 3. Appeal Br. 6. Claim 27 requires a closing plate that closes the access opening, which the Examiner reads on opening 10 of Szerdahelyi. Claim 27 further requires that the closing plate include an opening and a carrier module that carries a window lifting arrangement and closes the opening. In Szerdahelyi's first embodiment, module support 3 closes the access opening 10, and the window lift mechanism 31 is carried on that module, not on a carrier module/base plate, such as 5 or 6 of Szerdahelyi, that closes an opening in module support 3. The Examiner appears to rely on the second embodiment of Szerdahelyi, depicted in Figure 2a. The Examiner points to "practically completely closed inner door panel 1'b" (col. 5, ll. 22-23; fig. 2a) as the

closing plate (Answer 3), but this embodiment suffers the same deficiency as the first embodiment. The openings 3'a and 3'b are closed by functional units (lock and airbag units) 5, 6, not by a carrier module carrying the window lift mechanism 31, which apparently is fitted in the inner door panel 1'b (col. 5, ll. 23-28). Szerdahelyi's window lift mechanism 31 is mounted between the inner door panel 1'b and the outer door panel and can be seen through the openings 3'a and 3'b in Figure 2a of Szerdahelyi.

For the above reasons, Appellants' argument demonstrates that Szerdahelyi fails to meet all of the limitations of claim 27. The rejection of claim 27 and claim 28, which depends from claim 27, cannot be sustained.

The Obviousness Rejection

Claims 14-21

Claims 14-21 depend from claim 10 and thus require "an access opening formed at a free edge of said interior sheet metal." The Examiner's rejection of these claims under 35 U.S.C. § 103(a) as unpatentable over Szerdahelyi in view of Carlo is grounded in part on the same flawed determination that Szerdahelyi's opening 10 is "formed at a free edge of said interior sheet metal" discussed above with regard to claim 10. The Examiner relies on Carlo merely for its teachings as to details of the window lift mechanism and does not rely on Carlo for any teaching that would overcome the deficiency in the rejection of claim 10. The rejection of claims 14-21 as unpatentable over Szerdahelyi in view of Carlo thus cannot be sustained.

Claim 29

Claim 29 depends from claim 27 and thus requires a closing plate that closes the access opening, which the Examiner reads on opening 10 of

Szerdahelyi, and further requires that the closing plate include an opening and a carrier module that carries a window lifting arrangement and closes the opening. For the reasons discussed above with regard to claim 27, Szerdahelyi does not satisfy these limitations. The Examiner does not rely on Carlo for any teaching that would remedy this deficiency. Accordingly, the rejection of claim 29 as unpatentable over Szerdahelyi in view of Carlo likewise cannot be sustained.

DECISION

The decision of the Examiner to reject claims 10, 11, 14-21, 23, and 25-29 is reversed.

REVERSED

vsh

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